

Revised: January 31, 2019

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Kevin Garey Plaintiff(s), : No. 19-cv-00345(ALC) (SDA)

-against-

Lulu's Fashion Lounge, LLC Defendant(s).

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**REPORT OF RULE 26(f) MEETING AND PROPOSED CASE MANAGEMENT PLAN**

In accordance with Federal Rule of Civil Procedure 26(f), counsel for the parties spoke on April 26, 2019 and exchanged communications thereafter, and submit the following report of their meeting for the court's consideration:

**1. Summary of Claims, Defenses, and Relevant Issues**

This lawsuit concerns whether Defendant is violating the Americans with Disabilities Act, New York State Human Rights Law, New York City Human Rights Law and New York State Civil Rights Law, by failing to make its website equally accessible to the visually impaired. Defendants own and operate the website lulus.com. Defendant's website is a gateway to and heavily integrated with their physical locations: listing the store's locations and operation hours; and allowing customers to learn about products, goods, offers and services such as promotions and special offers.

**Defendant:**

Defendant's defenses are set forth in its Answer (ECF No. 12), and include (but are not limited to) that Plaintiff lacks standing because he has not suffered injury, that Defendant's website reasonably complies with applicable access standards, and that Plaintiff has unclean hands.

**2. Basis of Subject Matter Jurisdiction:** \_\_\_\_\_

**Plaintiff:**

This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 and 42 U.S.C. § 12181, as the plaintiff's claims arise under Title III of the ADA, 42 U.S.C. § 12181, et seq., and 28 U.S.C. § 1332. This Court has supplemental jurisdiction under 28 U.S.C. § 1337 over the plaintiff's New York State Human Rights Law, N.Y. Exec. Law article 15, (NYSHRL), New York State Civil Rights Law article 4 (NYSCRL), and New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, et seq., (NYCHRL) claims. Venue is proper in this district under 28 U.S.C. §1331(b)(1) and (2) because the plaintiff resides in this district; the defendant conducted and continues to conduct a substantial and significant amount of business in this district; the Defendant is subject to personal jurisdiction in this district, in that a substantial portion of the conduct complained of herein occurred in this district.

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### 3. Subjects on Which Discovery May Be Needed

#### Plaintiff:

Whether Defendant's website was created taking web accessibility into account. Previous complaints of inaccessibility. Issues and accessibility barriers present at time lawsuit was commenced.

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#### Defendant:

Defendant anticipates seeking discovery regarding Plaintiff's allegations of purportedly being denied reasonable access to Defendant's website, including discovery regarding Plaintiff's alleged disability and damages.

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### 4. Informal Disclosures

The information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure was disclosed by Plaintiff(s) on April 30, 2019. In addition, on May 21, 2019, Plaintiff(s) produced/will produce an initial set of relevant documents identified in its Initial Disclosures and will continue to supplement its production.

The information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure was disclosed by Defendant(s) on April 30, 2019. In addition, on May 21, 2019, Defendant(s) produced/will produce an initial set of relevant documents identified in its Initial Disclosures and will continue to supplement its production.

### 5. Formal Discovery

The parties jointly propose to the Court the following discovery plan:

- a. All fact discovery must be completed by 1/30/2020.
- b. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court,

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provided that the parties meet the deadline for completing fact discovery set forth in 3(a)

above.

- i. Depositions: Depositions shall be completed by 1/30/20 and limited to no more than 2 depositions per party. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.
- ii. Interrogatories: Initial sets of interrogatories shall be served on or before 9/20/19. All subsequent interrogatories must be served no later than 30 days before the discovery deadline.
- iii. Requests for Admission: Requests for admission must be served on or before 12/2/19.
- iv. Requests for Production: Initial requests for production were/will be exchanged on 6/14/19 and responses shall be due on 7/15/19. All subsequent requests for production must be served no later than 30 days before the discovery deadline.
- v. Supplementation: Supplementation under Rule 26(e) must be made within a reasonable period of time after discovery of such information.

## 6. Anticipated Discovery Disputes

Are there any anticipated discovery disputes? Does either party seek limitations on discovery? Describe.

The Parties do not anticipate any discovery disputes or limitations on discovery beyond those set forth in the Federal Rules of Civil Procedure and Local Rules of this Court.

## 7. Amendments to Pleadings

- a. Are there any amendments to pleadings anticipated? \_\_\_\_\_ No. \_\_\_\_\_
- b. Last date to amend the Complaint: 6/14/19

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**8. Expert Witness Disclosures**

At this time, the parties do/do not (circle one) anticipate utilizing experts.

discovery ~~Expert~~ shall be completed by 4/17/20.

**9. Electronic Discovery and Preservation of Documents and Information**

a. Have the parties discussed electronic discovery? Yes

b. Is there an electronic discovery protocol in place? If not, when the parties expect to have one in place? No; 7/19/19

c. Do the parties want the Court to enter a Rule 502(d) Order? (see Rule 502(d) Order)

Yes X No       

d. Are there issues the parties would like to address concerning preservation of evidence and/or electronic discovery at the Initial Case Management Conference? No.

**10. Anticipated Motions**

Plaintiff: Following the close of discovery, Plaintiff anticipates moving for summary judgment and Rule 23(b) class certification.

Defendant anticipates making one or more of the following motions: a motion to dismiss in favor of arbitration and/or change of venue on the basis of the terms and conditions in the website, dismissal of class action allegations, or for summary judgment.

**11. Early Settlement or Resolution**

The parties have/have not (circle one) discussed the possibility of settlement. The parties request a settlement conference by no later than 8/30/19. The following information is needed before settlement can be discussed:

Defendants require information concerning Plaintiff's alleged damages, and substantiation on Plaintiff's allegations.

**12. Trial**

a. The parties anticipate that this case will be ready for trial by 7/6/20.

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b. The parties anticipate that the trial of this case will require 1 days.

c. The parties do do not (circle one) consent to a trial before a Magistrate

Judge at this time.

d. The parties request a jury/bench (circle one) trial.

**13. Other Matters**

None.

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Respectfully submitted this 30th day of April.

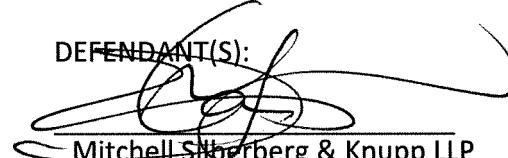
ATTORNEYS FOR PLAINTIFF(S):

/s/Jonathan Shalom

Shalom Law, PLLC.  
124-04 Metropolitan Avenue  
Kew Gardens, NY 11415

ATTORNEYS FOR

DEFENDANT(S):

  
Mitchell Silberberg & Knupp LLP

Bradley J. Mullins  
Elaine Nguyen  
437 Madison Ave., 25th Floor  
New York, NY 10022